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The hate crime concept in GERMANY and how to improve the knowledge on the extent of hate crimes

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1. Hate crime concept in the police registration system

In 2001, the year after the historic peak of right-wing extremist crimes registered by the police in Germany, the Federal Minister and state ministers of the Interior finally reached the conclusion that the pertinent police registration systems were not suitable any longer for dealing with the changed nature of right-wing extremist, xenophobic and antisemitic crimes. As a consequence, they unanimously agreed upon a resolution which officially introduced, among other amendments of the police registration system, the explicit category of "hate crime" (with the two sub-categories "xenophobic" and "antisemitic" crimes) in Germany.¹

The **'hate crime' concept** is still not explicitly mentioned in the German Penal Code, but it has become an integral element of the new police criminal registration and definition system "Criminal Investigation Registration Service – Politically Motivated Criminality" (KPMD-PMK) since 2001. The core criterion of this new system is the category of **"politically motivated crimes"** (divided in the three sub-categories: extreme left-wing, extremism by foreigners and extreme right-wing). The KPMD-PMK system replaced the former registration system KPMD-S which was focussed primarily on state security-related extremist crimes. Since 2001, "hate crime" constitutes a specific sub-category of **politically motivated crimes**:

Politically motivated criminal acts are considered hate crimes if (1) – taking into consideration the circumstances of the act and the attitude of the perpetrator(s) – indicators occur which imply that the crime was directed against a person because of his or her nationality, ethnicity, race, skin colour, religion, origin, sexual orientation, disability or because of his or her outward appearance or social status and that (2) the act is in causal relationship to this.

Antisemitic and xenophobic crimes are registered as sub-categories of "hate crimes". **Xenophobic** crimes are defined as those hate crimes "which were committed due to the victim's actual or alleged nationality, ethnicity, race, colour of skin, religion or origin." **Antisemitic** crimes are also defined as an explicit sub-division of hate crimes, i.e. those crimes "which were committed because of an anti-Jewish sentiment".²

Compared to the former registration system KPMD-S, the new police registration system brought significantly improvements through more harmonised and adequate definition criteria:³ In the former KPMD-S an antisemitic or racially motivated crime was only registered if the police assumed that the perpetrator "had the intention of disturbing fundamental

¹ Federal Ministry of the Interior (BMI); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 263

² Federal Criminal Office (BKA) (2004) Informationen zum polizeilichen Definitionssystem Politisch motivierte Kriminalität (PMK), p.8

Xenophobic and antisemitic crimes have been registered separately since January 1992 and July 2003 respectively. Criminal acts were deemed as xenophobic if they were „aimed and committed against a persons whose right to stay or residence (...) in Germany is questioned because of their actual or alleged nationality, ethnicity, race, skin colour, religion, belief, origin or their outward appearance, or acts that are committed against other persons/institutions/objects by the perpetrator with a xenophobic motivation“ (BKA, 1993)

³ BMI/BMJ 2001, p. 270

democratic principles of the state" (i.e. aimed at "overcoming the state"; to be categorised as "extremist"). Furthermore, the former definition of xenophobic crimes was based on the concrete **intentions** and explicit motives of the perpetrator. This definition system had led to a "deficient practice in registering the extent and the victims of extreme right-wing, antisemitic and xenophobic attacks" (e.g. differing applications of criteria due to the fact that the real intentions of the perpetrator often remain unknown).⁴

Since 2001, the central registration criterion has been the **politically motivated criminal act**, independent of whether this was evaluated as extremist or not (i.e. with the aim of "overcoming the constitutional principles of the state"). Furthermore, the strong emphasis on the xenophobic or antisemitic motivation of the perpetrator was reduced. The new police registration system should ensure that **all relevant indicators and circumstances** of the offence are registered and assessed in a comprehensive and nationwide more harmonized way⁵; with these amended criteria it has become easier to register a criminal offence as hate crimes (or more specifically, as xenophobic or antisemitic) even if the perpetrator refuses to admit his/her motives and if the offence is not categorised as extremist.

To promote the effective adoption of the new registration system by all police forces, "detailed instructions for action" were distributed in 2002⁶. Training measures on the correct application of the new registration system were offered and internal printed matter was circulated within the police force detailing the correct application of the KPMD-PMK.

2. Weaknesses of the (new) police registration system

Despite clear improvements, the police registration system continues to display certain **weaknesses**. The basic problem seems to be related to the initial assessment of the offence (as "politically motivated – right-wing", "hate crime" or "xenophobic") by the police officer in charge; in many cases – particularly if the perpetrator is not clearly recognisable as a member of the extreme right-wing milieu and his/her motives are not obvious – this assessment is difficult and causes problems, often aggravated by a lack of information and sensitivity, a lack of awareness of xenophobia or even by xenophobic attitudes within the police forces themselves.⁷ Furthermore, it has been criticised that sometimes police departments or individual police officers seem reluctant to register a criminal act as "politically motivated" or "hate crime" due to concerns regarding the reputation of the state, the region or the police district ("Right-wing extremism is not an issue in our district").⁸

Besides these weaknesses related to the decisive initial assessment by the police, there are also technical shortcomings within the registration and documentation procedure. This preliminary assessment, for instance, is often not corrected if the investigations of the public prosecutor and/or the judge come to a different assessment later on, i.e. conclude that the crime was motivated by xenophobia. The guidelines of the KPMD-PMK do not include an

⁴ According to the Federal Criminal Office, it "often" happened that a xenophobic background was not registered although the perpetrator was clearly affiliated to the skinhead milieu or neo-Nazi groups – just because the perpetrator refused to admit his (racist) motives (BMI/BMJ 2001, pp. 268-270).

⁵ BMI/BMJ 2001, p. 268

⁶ Federal Office for Internal Security (2003) Verfassungsschutzbericht 2002, p. 31. The exact nature of these instructions is not publicly available.

⁷ The Federal Criminal Office (BKA) itself and the Federal Ministries of the Interior and of Justice (BMI/BMJ 2001, p. 291) have noted such xenophobic attitudes as problems within the police forces (Neidhardt, K (2001) "Polizeiliche Bekämpfungsansätze gegen Rechtsextremismus und Fremdenfeindlichkeit", in: BKA (ed.) *Kriminalprävention. Rechtsextremismus – Antisemitismus – Fremdenfeindlichkeit*, Luchterhand: BKA, pp. 93-107; here: pp. 106/107)

⁸ Kleffner, H.; Holzberger, M. (2004) War da was? Reform der polizeilichen Erfassung rechter Straftaten, in: Bürgerrechte und Polizei/CILIP No. 77 (1/2004)

obligation of the police to follow the juridical proceedings of the case and change the initial assessment if necessary.⁹

Whereas these problems are related to technical issues which can be solved through a more thorough exchange of information between the police authorities, the public prosecutor and the courts, the registration system KPMD-PMK displays other inherent weaknesses: in almost all German federal states (exception: North Rhine-Westphalia), xenophobic and antisemitic offences are only registered as a sub-category of politically motivated right-wing crimes. Thus, certain hate crimes are not registered as such. If, for instance, a person from the extreme left-wing milieu commits an antisemitic hate crime, it is often not categorised as antisemitic; when in spring 2006, a group of people with dark skin colour were attacked in a underground train in Munich, the police argued that the attack was not registered as xenophobic crime because the perpetrators were of non-German origin.

3. A significant contribution: non-governmental victim support organisations

In addition to the official police statistics, several non-governmental **victim support organisations** in the Eastern German states (including Berlin) also collect information on right-wing violent acts, among those also racially and xenophobically motivated acts. These NGO represent an important source of unofficial data and information on (right-wing) hate crimes – a fact that has also been positively acknowledged by the European Monitoring Centre against Racism and Xenophobic (EUMC).

In 2005 and 2006 eight such organisations, which have all been financially supported within the governmental programme **CIVITAS**, have registered right-wing attacks and compiled joint annual statistics on right-wing violent acts in East Germany.

The data collection of these victim support organisations is mainly based (1) on the organisations' own practical support of victims of right-wing violence and (2) on their research which includes not only the local and regional press, different internet sources and relevant newsletter and mailing lists, but also obtaining information on extreme right-wing attacks from, for instance, journalists, representatives of the police and the office of public persecutor.¹⁰

In most (Eastern) federal states, the unofficial data indicate a higher level of right-wing violence than the official PMK statistics due to the differences in the applied definition and registration criteria. For instance, the police can only register those crimes that have been reported to them, whereas the NGOs actively do research themselves to collect more such incidents. Furthermore, the definition of "extreme right-wing" used by the police in accordance with the registration system KPMD-PMK/right-wing is different (i.e. more narrow) to the definition applied by the victim support organisations which have a rather broad and flexible definition approach to categorise a violent act as "right-wing motivated". In addition, the definition of "violent act" used by these NGOs partly differs from the official definition applied by the police.¹¹

⁹ Kleffner/Holzberger 2004, pp. 56-64

¹⁰ Koordinator der CIVITAS-geförderten Beratungsstellen für Opfer rechtsextremer Straf- und Gewalttaten (ed.) (2003) beraten – informieren – intervenieren. Die Arbeit der Beratungsstellen für Opfer rechtsextremer Straf- und Gewalttaten, Berlin, p. 7

¹¹ The Brandenburg victim support organisation *Opferperspektive*, for instance, evaluates violent crimes as extreme right-wing "if they are directed towards typical victim groups, which, for example, due to their nationality, ideology or sexual orientation are not accepted by the perpetrators" (*Opferperspektive* (2004) *Jahrbuch Opferperspektive* 2004, p. 8). Concerning the definition of "violent acts", the victim support organisation also counts acts of threat/coercion, whereas the police categorise such acts as "other (non-violent) offences".

A comparison between the unofficial and the official data clearly shows that both sources are not fully suitable of reflecting the real extent of right-wing and xenophobic violence and crimes: In the federal state of Brandenburg, for instance, the regional victim support organisation *Opferperspektive* compared their (unofficial) data on violent right-wing acts with the police statistics (State Criminal Office) for 2004: The unofficial statistic listed 134 right-wing attacks, whereas the police statistics listed "only" 107 politically motivated right-wing violent acts. 40 of the cases presented by the police were unknown to the victim support centre; conversely, 55 violent crimes were missing in the police statistics that were categorised by the victim support organisation as right-wing attacks¹².

Such a comparison suggests that both sources have their specific strengths, but also their limits; therefore, the combination of both, official and unofficial sources based on different collection methods and definitions, contribute to give a more accurate picture of the situation as a whole

4. Recommendation

Measures aiming at an improvement of the police statistics and the registration system

A particularly vulnerable phase in the process of registering a criminal offence (as a hate crime or as a "regular" non-hate crime) is the initial assessment of the police officer in charge. Since this decision has a crucial impact on the subsequent investigations, the sensitive and adequate preliminary evaluation of what is already known about the circumstances of the crime is decisive. Thus, specific **police training programmes** for all police units – not only for specialised task forces – is indispensable. Such training programmes should impart information on, among others, the registration system and how to apply it in practice, about the potential perpetrator groups (e.g. meaning of neo-Nazi symbols) and typical patterns of offences, but also about the potential victim and their perception. In addition to these knowledge-oriented topics, training programmes must also encompass awareness raising and sensitivity components. Some promising and awareness raising projects (e.g. the European project 'NGOs and Police against Prejudice') have been conducted within the police (e.g. direct exchange between police officers and minority members for a better mutual understanding and relationships of trust); such successful projects could be adapted and become an integral element in the regular police training.

Generally speaking, hate crime-related topics must be incorporated into the regular police training curricula (initial training as well as further training) in a theoretical, but also practice-oriented way. This could contribute to an improvement of the initial assessment of a criminal act and consequently to better statistics on hate crimes.

The 2001 registration system KPMD-PMK still leaves room for conceptual improvements: Technical shortcomings regarding the amendment of the initial assessment of the criminal act after the investigations of the public prosecutor and/or the judge should be overcome by an **institutionalised information exchange process** between the courts and the police authorities.

Given the nature of hate crimes, it seems essential that the criteria for the police assessment of a hate crime should be less (right-wing) perpetrator-oriented and more victim-oriented. Such a shift would (a) diminish the problematic focus on the affiliation of a perpetrator with the extreme right-wing or neo-Nazi milieu; this appears indispensable for an appropriate registration system due to the changed right-wing scene (in Germany) in which clear organisational boundaries and formal group membership is slowly turning into more informal

¹² Opferperspektive e.V. (2005): Rechte Gewalt – Definition und Erfassungskriterien (online: www.opferperspektive.de)

groups and because many right-wing extremist persons are increasingly less recognisable as such ("normal" instead of skinhead outfit).

A stronger victim-focus of the police registration criteria of hate crimes is also important (b) to enable the police to register antisemitic or xenophobic hate crimes irrespective of the political background of the perpetrator. If a crime is committed by an offender due to his/her prejudice against the victim's (real or alleged) religion, nationality, disability, sexual orientation or other hate crime-relevant characteristics, it should not matter whether the perpetrator is affiliated with the left-wing or the right-wing milieu or of what nationality he/she is.¹³

Another reason why the real picture of hate crimes is difficult to unveil is the fact that many victims do not report their case to the police (**underreporting**); this seems especially true for hate crime victims (e.g. minorities). Consequently, various measures aiming at encouraging (hate) crime victims to report constitute additional possibilities to improve the data situation on hate crimes. More sensitivity of the police when dealing with victims of crimes, in particular with victims of hate crimes, seems essential. This lack calls for (further) training programmes imparting information and aiming at more sensitivity – as regular elements in the police training curricula. Such training programmes should cover the sensitive task of dealing with crime victims in general and, more specifically, with victims of hate crimes – which requires particular awareness (e.g. repeated victimisation). Apart from these training measures, specialised commissioners for victims within the police forces are to be appointed in *all* police departments; these specialised police officers need explicit expertise in dealing with victims of hate crimes; they could also function as multipliers within the individual police departments and provide internal information and further training to other the police officers.

Instalment of an independent central monitoring body

The socialist party "Die Linke/PDS" have continuously urged the government to install an independent monitoring body on extreme right-wing extremism, xenophobia and anti-Semitism. Such an independent body should bundle the monitoring activities of local and regional organisations and contribute to draw a more comprehensive picture of the extent and nature of these phenomena.

Since 2001, the (eight) CIVITAS supported victim support organisations in East Germany (see above) have developed a unofficial monitoring network applying an increasingly harmonised approach based on media search, victim support work and – in some cases – also in cooperation with official bodies. These specialised NGOs apply similar registration and selection criteria and the regional statistics on right-wing attacks and victims of such attacks are put together and jointly published at least once a year.

This network approach of improving the data collection mechanism on hate crimes seems promising and should be expanded to the rest of the country. Such a network needs solid and long-term funding to carry out its monitoring duty (in addition to the counselling and support work) without giving up their independence on governmental institutions and potential interests. A close network of supportive local and regional NGOs which covers all areas of the country is of great importance; furthermore, one organisation must be in charge of coordinating this network (e.g. the joint development of common registration criteria and systems, collecting the results of the individual organisations). This coordinator may also be responsible for the cooperation with the authorities including the Federal and State Criminal Offices, the Offices for Internal Security and the public prosecutors (e.g. comparing the official with the unofficial data)

¹³ The police in the United Kingdom may serve as a good example: If the victim or a third person (e.g. a witness) perceives the criminal act as an act of racism, the police have to follow this initial personal assessment and have to conduct the subsequent investigations accordingly.

Hate crime as an explicit offence in the Penal Code

German legislation on combating racist crimes has mainly been assessed positively.¹⁴ However, it is to be mentioned that **proposals to further enhance the legal provisions** have been rejected by the government: Several national and international organisations (e.g. ECRI) as well as the State of Brandenburg¹⁵ urged the legislators to define racially motivated crimes or other extreme right-wing “hate crimes” as a specific offence in the Penal Code and to pass legal provisions according to which xenophobic motivation is to be taken into account as an aggravating factor by the courts. Until now, the government has rejected these requests.¹⁶ Such an amendment to the Penal Code could also contribute to an improvement of the data situation concerning hate crimes – although such a legal amendment could also lead to more difficulties concerning the investigations of the motives of the perpetrators.

For further information, please feel free to contact me:

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¹⁴ ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: CoE, pp. 9-10

¹⁵ Brandenburg proposed a pertinent bill in the German *Bundesrat* in late September 2000 (Germany, Bundesrat, printed matter 577/00 (26.09.2000)).

¹⁶ Federal Ministry of the Interior (2004) *Zweiter Bericht der Bundesrepublik Deutschland, gemäß Artikel 25 Abs. 2 des Rahmenübereinkommens des Europarats zum Schutz nationaler Minderheiten*, p. 288-289